Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Sales Tax Revision No. 51 of 2001
(Old No. 752/1992)

The Commissioner of Sales Tax,
Uttar Pradesh, Lucknow

……. Applicant/Revisionist

Versus

M/s Manora Gram Swaraj Ashram,
Rani Bag, Nainital,
District Nainital.

……. Opposite Party

Mr. Sayeed Nadem, Learned Standing Counsel for revisionist.
None for the respondent / opposite party.

Hon'ble Prafulla C. Pant, J.

This revision, preferred under Section 11(1) of the U.P. Sales Tax Act, 1948, was originally filed by the Commissioner of Sales Tax, Uttar Pradesh, before the Allahabad High Court in the year 1992 and received by this Court on transfer under Section 35 of the U.P. Reorganization Act, 2000, for its disposal.

2) The revision is directed against the order dated 01.02.1992 passed by Sales Tax Tribunal, Barielly in second appeal Nos. 139 / 90, 140 /90 and 145 / 90. The revision involves following question of law:

"Whether, on the facts and in the circumstances of the case, the Sales Tax Tribunal was legally justified that earthen tiles fell under the category of 'Pottery'?"

3) Heard learned Standing Counsel appearing on behalf of the revisionist. No one turned up on behalf of the assessee, even after service of notice.

4) The assessee is a Village Industry Unit, who is exempted from payment of tax in respect of certain items. The dispute relates to the assessment years 1981-82, 1982-83 and 1983-84. The assessee unit is dealing in manufacture and sale of rosin, turpentine oil and varnish after purchasing 'Leesa'. It is also involved in the business of manufacturing and sale of bricks and 'khaprail' (earthen tiles). The learned Tribunal while disposing of second appeal Nos. 139 / 90 (assessment year 1982-83); 140 / 90 (assessment year 1981-82) and 145 / 90 (assessment year 1983-84) has taken the view that the earthen tiles come within the definition of 'Pottery'. The item 'cottage pottery industry' is exempted under Notification No. S.T.-II-5025/X-6(12)-79-U.P. Act XXV-48-Order-79; dated 30th June, 1979 and Notification No. ST-II-5395/X-90(60)/59-U.P. Act No. XXV-48-Order-82; dated 30th September, 1982.

5) Learned counsel for the revisionist argued that 'Pottery' refers to the pots only and cottage industries who are preparing earthen pots could be said to be manufacturing pottery and not those who are

manufacturing earthen tiles also. I examined the meaning of word ‘Pottery’ as explained in WEBSTER III New International Dictionary. In said Dictionary, the word has three meanings, viz.:

i) a place where clayware is made or fired;

ii) art or craft of potter, and manufacturer of clayware;

iii) earthenware as distinguished on the one hand by porcelain or stoneware and on the other from brick or tile.

The above definition makes it very clear that the earthen tile cannot be brought within the definition of ‘Pottery’, as such, this Court is unable to agree with the view of the Sales Tax Tribunal. Therefore, in view of the above discussion, the question is answered in favour of the revisionist and the revision is accordingly allowed to the extent as discussed above. The impugned order dated 01.02.1992 passed by the Tribunal is set aside to the above extent.

(Prafulla C. Pant, J.)

Dt: 28.07.2005
HN